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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Appn. Number : 10/021,656

Appn. Filed : 12-12-2001

Applicant : GARY C. JOHNSON

Title : Johnson – positive action continuous traction differential (p.a.c.t.)

Examiner : Dirk Wright

Art Unit : 3681

NEW MATTER STATEMENT

Statement concerning New Matter:

With this statement I, Gary C. Johnson attest to and verify that there is no "New Matter" contained in the enclosed "Amendment to the Amendments" of the; "Detailed Description of the invention". I further attest to; that, the (new) Claims 9 and 10, do not contain any "New Matter". The corrections / amendments made are contained in the disclosure of the original application. These; enclosed Amendments are directed to the Amendments of; 11-12-2004.

Signature:

Date:

4-20-2005



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Appn. Number : 10 / 021, 656

Appn. Filed : Dec. 12 – 2001

Applicant : Gary C. Johnson

Title : Johnson – positive action continuous traction (p.a.c.t.)
vehicle differential

Examiner : Dirk Wright

To: The Director of Patents
P.O. Box - 1450
Alexandria, VA 22313 – 1450

I am Gary C. Johnson, inventor of the p.a.c.t. differential.

I discovered the one and only means for a vehicle's differential to have continuous positive-traction (posi-tract) and, yet allows drive wheel variability when needed. My differential invention, uses all gear drive and will only allow inversely proportional mode of variability between drive wheels. This has never been accomplished before, particularly with all gear drive. The p.a.c.t. differential makes obsolete; electronic traction-control systems, every type of locking-differential and every type of limited-slip differential. There are literally over two-hundred patents over the past thirty-years (1975 to present); concerning traction-control and various differentials. Mine was not a fluke, nor was it serendipitous. It took me; ten-years of searching to find.

I simultaneously introduced my differential invention to; Ford and Daimler-Chrysler in; March of 2001, after filing a Provisional patent application. Ford acknowledged receipt of the invention but, Daimler-Chrysler would not (three times). I have enclosed a copy of the first letter from Ford. I can establish from this letter; the approximate time that Daimler-Chrysler would have received theirs. I also have "Confirmation" mailing receipts. I can reasonably establish; what was sent and when it was sent; by a combined implication.

After sending in my differential invention to; Ford and Daimler-Chrysler, I had afterwards found a way to simplify my invention; wherein the amount of gears needed, were significantly reduced. I also made this known to; Ford and Daimler-Chrysler. Daimler-Chrysler again; would not respond. It is quite possible that, one of either companies could have come up with the same final version, as I had. However, it would have to be a company without any knowledge of my invention; (or; disavow knowledge of), in an "Interference Proceeding" (35 U.S.C. 135). Therefore, I find it imperative that, I point out what was lacking in my application and the necessity of the omitted items, according to; MPEP - 409.03(g), 702.01(B),(D); paragraph-2, 707.07, 601.01(d), 2163, 2163.03, 608.01(h), and 707.07(a). My application never contained, by text nor title a functional; "Detailed Description of the Invention" (formerly called; Description of the Preferred Embodiment).

(continued from page 1)

It is absolutely necessary that a patent applicant be informed of an inadequate; description of the Invention, for the following reasons:

- (1) To avoid a "piecemeal examination", see; MPEP 707.07 (g).
- (2) To avoid "Irreparable Damage", see; MPEP 409.03 (g).

The fundamental operation of my invention (provisional application) was revealed to; two auto companies, before I filed a non-provisional patent application; which presented the "best mode contemplated" of my invention.

- (3) MPEP 702.01(b)- "Obviously Informal Cases" states; "Informalities noted by the Office of Initial Patent Examination (OIPE) and deficiencies in the drawing should be pointed out by means of attachments to the [first] Office action (see also; MPEP 707.07(a); first paragraph). However, MPEP 707.07(a); second paragraph pertains to "formal" requirements but, does not prevent the requirements of the first paragraph, of the Draftsperson, the OIPE and the examiner to point out "informalities" to the patent applicant.

According to; MPEP 707.07(b), matters of "form" need not be raised until a claim is found allowable. However, "form", does not pertain to; informalities and deficiencies.

- (4) MPEP 601.01(d)- "Application Filed Without All Pages of Specification"; makes mention of applications "filed without all pages of specification" but, containing something that can be "construed" as a "written description". However, the procedure of MPEP 601.01(d) still requires the OIPE to; mail a "Notice of Omitted Items".

- (5) MPEP 2163, section 1.; paragraph three states; "the written description requirement, must describe the claimed invention in sufficient detail that one skilled in the art can reasonably conclude that "the inventor had possession of the claimed invention. Possession, particularly pertains to; "Interference".

What was construed as written description (Detailed Description of the Drawing) can not support itself. It is dependant upon the Drawing. It is not descriptive in itself, nor is it a functional description. It only describes the relationship between the elements of the invention. Neither is it consistent with what a detailed description of the drawing should be, therefore it was omitted in and by my last amendment.

- (6) MPEP 2163.03, first paragraph states; "a question as to whether a specification provides an adequate written description may arise in the context of an original claim which is not described sufficiently".

It is apparent that, the written description must support the claim(s).

What I found to be most revealing was that, once I had voluntarily prepared a "Detailed Description of the Invention"; claim writing became obvious.

"WHY MY PATENT WAS WRONGFULLY STOPPED"
(continued from page-2)

I am; Gary C. Johnson, inventor of the p.a.c.t. differential application # 10/021,656. I said; "patent", (heading) instead of patent application because; it is known that, my application is in order. See; Manual for Patent Examination Procedure (MPEP) – 1301 called; Substantially Allowable Application, Special. "Special", meaning; requiring prompt attention to (a status of; special, allows the application to be advanced out of turn if necessary). When a patent application is considered to be; "Allowable", a "patent" is inevitable. See; MPEP 1302.03-"Notice of Allowability ". See also; MPEP 1300-"Allowance and Issue.

MPEP 706.03 "Rejections Not Based on Prior Art", states; The primary object of the examination of an application is to determine whether or not the claims are patentable over the prior art. This consideration should not be relegated to a secondary position while undue emphasis is given to nonprior art or "technical" rejections. Effort in examining should be concentrated on truly essential matters, minimizing or eliminating effort on technical rejections which are not really critical.

MPEP 706.03, pertains to; prior art as being the first and foremost matter of a patent examination and not mere technicalities; "which are not really critical". My patent application was stopped for a very insignificant reason, which as it turns out; wasn't required anyway. It is an undisputable malicious act of subterfuge.

First of all; according to MPEP 707.02 – "Applications Up for Third Action", the examination of my patent application should have been supervised. It has been the subject of much controversy. The primary examiner has continually resisted advancement of my application by:

- (a) Excessive overages in response time. Response time for an examiner is two months. The first response, took four months. The second response, took five months (minus the amount of time for recording IFW; six weeks).
- (b) A Premature, Final Rejection. See; MPEP 706.07(c). The (premature) Final Rejection, was mailed; 10-16-2003, and was reversed; 05-14-2004, which is a difference of seven months time.
- (c) The examiner never drafted my first claim as required; "when an application discloses patentable subject matter". See; MPEP 707.07 (j) sections I. and II. . See also; MPEP-401: "form paragraph" 4.10. Form paragraph 4.10, is used when it is apparent to the examiner that, "patentable subject matter appears to be disclosed". Form paragraph; 4.10, was used by the examiner in my first and third "Office Action" but, not used in the second "Office Action". Therefore it can be assumed that, the examiner recognized the "patentable subject matter". Particularly since, there was only one reference relied on.
- (d) The refusal to amend and/ or allow an insignificant informality, therein refusing to examine my application. See; MPEP 1302.04, first "Examiner Note" of; form paragraph; 13.02.02, which states; "In the interest of expediting prosecution and reducing cycle time. Examiners may continue to make additions or deletions of subject matter, including the claims.

"WHY MY PATENT WAS WRONGFULLY STOPPED"
(Part-II, continued from page-3)

The Legal Instruments Examiner; mailed to me a "Notice of Non-Compliant Amendment" on; 11-03-2004 and again on; 12-03-2004. However, under the heading of; "THE FOLLOWING CHECKED (X) ITEM(S) CAUSE THE AMENDMENT DOCUMENT TO BE NON-COMPLIANT", of each notice; block(s) 4-A were not checked-off. This constitutes two separate cases (though combined as one).

According to; MPEP 707.07 (e)-Note All Outstanding Requirements. "Every point in the prior action of an examiner which is still applicable must be repeated or referred to, to prevent the implied waiver of the *requirement*". Therefore, whatever isn't checked can be presumed to be a waiver or a fulfilled requirement. Block 4-A of the; Notice(s) of Non-Compliant Amendment (37 CFR 1.121), pertains to; "a complete listing of all the claims", which is in reference to 37 CFR-1.121(c). However, 37 CFR 1.121(g); allows the examiner to, make an exception to; 37 CFR 1.121(c). Therefore it can be assumed that the said; unmarked block(s); 4-A of the Non-Compliant Notice(s), were a presumed waiver/exception of 37 CFR 1.121(c) and not merely an oversight, which brings me to my next point.

According to; the checked block(s) 4-D of both Non-Compliant Notices, it is indicated that my amended claims "have not been presented in ascending numerical order. However, it is because of a lack of a "complete claim listing" (which are the unchecked block(s) of 4-A) that cause, my said claims to be out of ascending order. In other words, if block(s) 4-A had been checked by the U.S. PTO on the first Non-Compliant Notice of; 11-03-2004 and complied with; by me, the act of claim listing, would have automatically placed my claims in ascending numerical order. Also, notice that block 4-C was checked on the first notice of; 11-03-2004 but, not on the second notice of 12-03-2004. This is because; I had included on a separate sheet; the status of each and every claim that I had ever presented in the application. Therefore, block 4-C of the second notice of; 12-03-2004 was not checked; an indication that the requirement of block 4-C had been subsequently fulfilled.

However, by block 4-C being; checked in the first notice but, unchecked in the second notice; is a sure indication that, my claim status sheet had been seen prior to the second notice (12-03-2004) had been sent and that claim(s) status was known.

Furthermore, since cancelled claim(s) have no remaining text, only the number(s) and status remains; therefore, technically my claims are presented in ascending numerical order; particularly since the status of the claim(s) were evidently known.

According to; MPEP 608.01(j) and 37CFR 1.126-Numbering of claims; it is first and well known that, in the conclusion of a patent application that the U.S. PTO renumbers all remaining claims, unless otherwise instructed by the applicant.

"WHY MY PATENT WAS WRONGFULLY STOPPED"
(Part-III, continued from page-4)

According to; MPEP 1302.04-Examiner's Amendments and Changes, Examiner Note # 2; second paragraph; "no examiner's amendment whether formal or informal, may make substantive changes to the "written portions" of the specification, without first obtaining applicant's approval. The above mentioned procedure is correct but, it pertains to corrections in the "body" of the written portions of the specification (the specification includes claims).

The examiner's amendment needed in my application, only necessitated a superficial amendment; outside the body (written portions) of the claims.

As mentioned afore; "no examiner's amendment can be made without first obtaining the applicant's approval". I had already; beforehand, in my request section (see; requests and remarks of my 11-12-2004 amendments) and in the remarks section; requested the examiner to renumber my claims where necessary.

Authorization for an examiner's amendment is usually first attempted by phone; by the examiner. My phone number is available to the U.S. PTO, see; change of address form. Furthermore, I called; Mr. John Doll (of the Director's office) three consecutive times concerning the alleged Non-Compliant Amendment of; 12-03-2004, to no avail. I also had called the examiner; he had also refused to make the amendment.

All that was needed is this line: [1-8 (cancelled)] ; to proceed the text of claims 9 and 10. As I said before, the claims were out of ascending numerical order because the Legal Instruments Examiner never marked the block; 4-A; of the first Non-compliant Amendment Notice (nor the second notice) which is the fault U.S. PTO. I have both notices (with errors) well recorded and witnessed, as being directly from the U.S. PTO website. I also saved the erroneous Non-Compliant Amendment Notices in certain data banks, wherein it can't be said; nor implied that said documents were altered on my end (agencies without scanners).

John Doll (pronounced; Dole) of; the Director's office, in one of our conversations, stated that; if my claim status sheet had not been stapled to the back instead of the front of the claims, then my amended claims would have been in numerical order.

This is another bogus call, see; MPEP 605.04(a) section-I, paragraph-5. It is the PTO's definition of the word; "Attached"; "physical connection is not required". Furthermore, MPEP 714.23-Entry of Amendments; allow the examiner's to enter in it's proper place, (if known) an "inaccuracy in the paragraph number and/or page and line". My claim status sheet isn't numbered; it is the intended cover-sheet.

In conclusion, I have just mentioned several (about seven) reasons why the U.S. PTO has wrongfully stopped my patent application. I have no need of an extension.